Investigations

Combatant Command and Joint Inspector General Course

Points of Contact

Room 2105
703-805-3895
DSN 655-3895

or

Room 2501
703-805-3904

Three Themes

- **Preliminary Analysis (PA)**
- **Staff Judge Advocate (SJA)**
- **Critical Thinking (ROI)**

Under the Umbrella of Policy and Doctrine

Enabling Learning Objectives (ELOs)

1. Describe the four parts of an allegation.

2. Identify who may direct an IG investigation / inquiry.

3. Describe the IG standard of proof.

Introduction

- **An IG investigation or investigative inquiry is one of the Commander's options to handle allegations of impropriety against soldiers and Department of the Army civilian employees**
- **Administrative Process**
- **Goals:**
  - **Fair and Impartial**
  - **Discreet**
  - **Rights Protection**

Inspector General Action Process

- Receive the IG Action Request
- Conduct IG Preliminary Analysis
- Initiate Referrals / Make Notifications
- Obtain the Facts
- Make Notifications of Results
- Conduct Follow-up
- Close the IGAR

Phases of an Inspector General Investigation

- **Analyze the complaint for allegations**
  - **Determine standards involved**
  - **Determine appropriateness**
- **Authorization**
  - **Commanding General**
  - **Inspector General**
- **Planning**
  - **Elements of proof to prove or dismiss**
  - **Develop witness list**

Triggering Events

- **Inspectors General receive allegations of wrongdoing in several formats**
  - **Phone calls**
  - **Letters**
  - **E-mail**
  - **Anonymous**
- **The complainants are either 1st party or 3rd party**

IGPA

- **The first thing we do after we receive the IGAR is to conduct Preliminary Analysis**
- **How to read a complaint…**
- **Issues versus Allegations**

Allegation

- **Who**
  - Must be an individual
- **Improperly**
  - The word “improperly” shows wrongdoing
- **Did** (or did not do)
- **In Violation of a Standard**
  - A standard is law, regulation, or policy

Allegation
Cont'd

COL[1] Brown improperly[2] issued[3] a letter of reprimand to a subordinate at Fort Von Steuben in violation[4] of Army Regulation 600-37

IG Appropriate

- **Punitive versus Non-Punitive**
- **Criminal versus Administrative**
- **IGs can inquire / investigate violations of laws, regulations, and policies / directives.**

Commander's Options

- Commander's Inquiry
- Army Regulation 15-6 Investigation
- Criminal Investigations Division / Military Police Investigation
- Civilian Law Enforcement
- Inspector General Investigation

Commander's Options
(cont'd)

- **Commander's Inquiry:**
  - Conducted by the commander
  - The most informal of all options available to resolve allegations
  - Investigate minor criminal acts and violations of Army Regulations
  - Can be used for adverse action

Commander's Options
(cont'd)

- **Army Regulation 15-6 Investigation:**
  - More formal than a commander's inquiry
  - Commander appoints officers in the grade of Major to Colonel to conduct the investigation
  - Investigate minor criminal acts and violations of Army Regulations
  - Results can be used for adverse action

Commander's Options
(cont'd)

- **Criminal Investigations Division (CID) Military Police Investigation (MPI)**
  - Investigate minor felony and misdemeanor allegations (Military Police)
  - Investigate serious criminal misconduct
  - Can be used for non-judicial punishment
  - Can be referred to a Military Court for courts-martial

Commander's Options
(cont'd)

- **Civilian Law Enforcement:**
  - Available to the commander when a soldier is accused of violating civil and criminal law outside of military jurisdiction

Inspector General Investigations

- **Theory behind choosing an IG Investigation**
  - Administrative versus Criminal
  - Available to the commander to investigate violations of law, regulation, and policy
  - Fair and impartial fact-finding
  - Protect the best interests of the Army while protecting the reputations and identities of the soldiers involved

Inspector General Investigations
(cont'd)

- **IG Investigations are conducted:**
  - Based on the Commander's guidance
  - When the commander needs more facts
  - Seriousness of the allegation
  - Identity of the subject / suspect
  - Impact on the command and the Army

Obtain Authority Inquiry

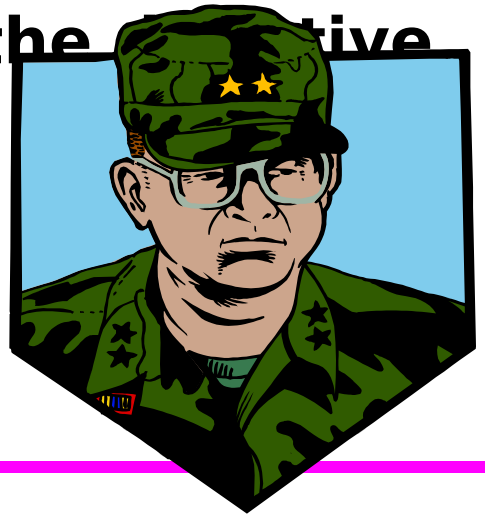
ELO

- Command or State IG may direct
- Formal authorization from directing authority not required
- Based on commander's guidance

Obtain Authority Investigation

ELO

- Requires a written directive from the directing authority. (Commanding General / The Adjutant General / The Inspector General)
- The detailed IG responsible for the investigation normally obtains the directive
- The IG prepares an Action Memorandum to request the written directive



Obtain Facts Plan

- **Investigation requires a written plan**

- **Recommended scope and format:**
  - **Mission**
  - **Facts bearing on the mission**
  - **Defines standard**
  - **Evidence and data required**
  - **Witnesses, documents, and other evidence**
  - **Administrative matters**
  - **Itinerary, notifications, personnel actions**

- **Minimum Plan:**
  - **Witness list including subject/suspect, SMEs, and complainant**
  - **Questions / Interrogatories**
  - **Time, location and sequence of interviews**

Evidence Matrix

Allegations --- Witnesses	Dignity and Respect	Adultery	Destruction of Property	Late OER	False Statement
Mrs. Powell					
Mr.Perri					
Mrs. Jones					
MAJ Ward					
Documents					

Phases of an IG Investigation

- **Fact-Finding**
  - **Most evidence collected is testimonial**
  - **Only collect enough evidence to prove or dismiss the allegations**
- **Verification and Evaluation**
  - **Standard of proof for an IG investigation is the preponderance of credible evidence**

Notification Process

- **Notify commander / supervisor and the subject / suspect of the Investigation**
- **Notification of Investigation results made to:**
  - **Complainant (3d party / injured party)**
  - **Commander / Supervisor**
  - **Subject / Suspect**

Categories of Individuals

- **Witness:**
  - **Someone whom we believe has some knowledge to support or refute an allegation**
  - **May also be a subject-matter expert (SME)**
- **Subject:**
  - **Someone against whom a non-criminal / non-punitive allegation is made**
- **Suspect**:
  - **Someone against whom a criminal / punitive allegation is made**

Subject / Suspect Rights

- Know and comment on all allegations / unfavorable information
- Consult with legal counsel
- Confidentiality
- Review own testimony
- Avoid self-incrimination
- Know rights under Article 31 Uniform Code of Military Justice (UCMJ) (suspect only)
- Have counsel present (suspect only)

Non-Rights: All

- Know identity of other witnesses
- Be present when other witnesses are interviewed
- Question others
- Review other's testimony

Witness Testimony

- **Witness cooperation:**
  - **All soldiers on active duty**
  - **Reserve and National Guard soldiers on federal status**
  - **Department of Defense Civilian employees**
  - **Government Contractors (conditional)**
- **Testimony taken in an IG investigation is sworn and recorded**

Phases of an IG Investigation

- **Obtain approval**
- **Findings can only be used for adverse personnel action with permission of The Inspector General, Chief of Staff, or Secretary of the Army**
- **Notify the principals of the results**

IG Standard of Proof

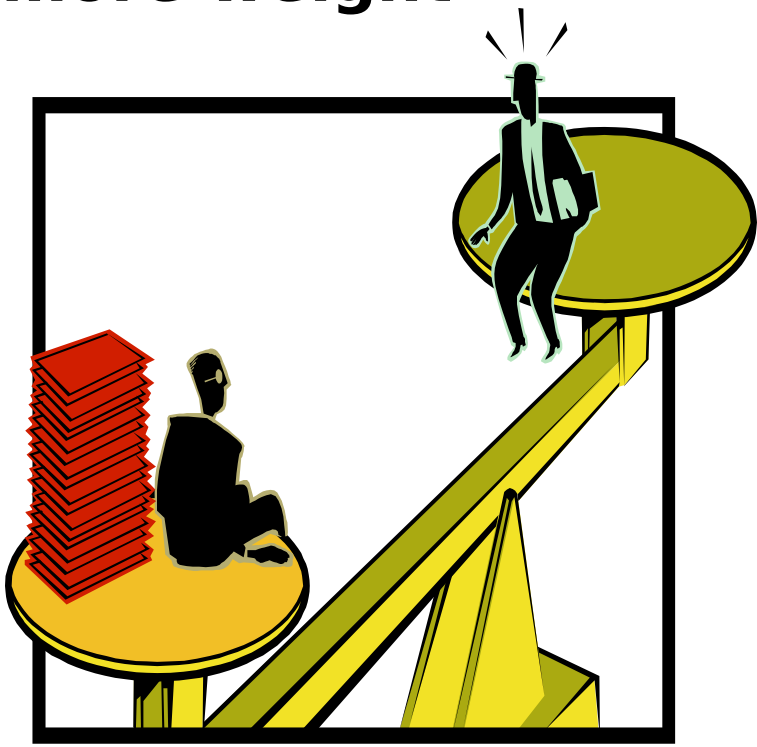
ELO

- **Preponderance of credible evidence**
  - **That evidence which has more weight**
  - **>50%**
  - **"More likely than not"**

- **Only two conclusions:**

Substantiated "S"

Not Substantiated "N"



Phases of An IG Investigation

- **Prepare a written report**
  - **Fair and balanced report**
  - **Only two findings:**
    - ✓ **Substantiated – allegation is true**
    - ✓ **Not Substantiated – allegation is false**
  - **Recommendations are made:**
    - ✓ **to fix systemic issues**
    - ✓ **for the Commanding General to conduct a follow-on investigation if adverse actions are needed**

Purpose of Reports

- **Provide the Commanding General with a fair and impartial representation of the evidence gathered**
- **Provide the Commanding General the information needed to make a decision based on the facts**

Building the Report

- **Executive Summary**
  - Name / Position
  - Authority
  - Background
  - Synopsis
- **Introduction**
- **Consideration of Allegations**
- **Other Matters**
- **Recommendations**
  - Approve the case
  - Close the case
  - Appoint a follow-on Investigator

Example ROI / ROII

1. ALLEGATION: Ms Doe improperly abused her authority by acting in a discourteous and disrespectful manner to her subordinate employees in violation of DoD Directive 1400.5 and AR 600-100.

2. EVIDENCE:

a. Standards:

(1) DoD Directive 1400.5, DoD Policy for Civilian Personnel, ***dated*** ... stated ***in paragraph***...(EXHIBIT B-

(2) AR 600-100, Army Leadership, ***dated ,*** stated **in paragraph x-x that "**Army leaders were responsible for treating subordinates with dignity, respect, fairness, and consistency." (EXHIBIT B-2)

Example ROI / ROII

b. Documents:

(1) In a memorandum dated 18 March 1996, subject: Ms Doe Meeting, Mr. Vik Tim, GS-13, Deputy Director, Law Enforcement and Security Division, Fort Woebegone, described an encounter with Ms Doe. Ms Doe, who had gotten a speeding ticket, called him on 18 March 1996 and began a lengthy and abusive tirade about poor MPs. Ms Doe was irrational, highly agitated, out of control, loud, and used expletives. Ms Doe also called him at home and screamed about the police. Ms Doe's actions were intimidating. (EXHIBIT B-3)

Example ROI / ROII

(2) In a handwritten note dated 26 February 1999, CPT Bret Maverick, GOTCOM Police Force, stated that on 25 February 1999, he stopped Ms Doe's car from driving onto a range that had just been closed for a security sweep. Ms Doe yelled, moved her arms, and said: **"**Damn it, I own you people**."** He directed Ms Doe to park by the road, and she complied. (EXHIBIT B-4)

[Investigating Officer Note: On 15 November 1999, CPT Maverick confirmed he had given the note to Mr. Tim, and the incident had taken place as he described it in the note.]

Example ROI / ROII

c. Testimony

(1) Ms Goodyie Tooshuz, GS-7, Management Assistant, GOTCOM, testified on 14 January 2003 that she worked at GOTCOM for two years. She worked directly for Ms Doe. Ms Doe had never been rude to her, and she liked Ms Doe. Ms Doe could be a very hard person. She (Ms Doe) expected people to do their jobs, and she did not like to repeat things. Ms Doe was loud, but she (Ms Doe) did not scream at people. Some people felt intimidated by Ms Doe. She had heard Ms Doe say, “Damn it” and, when Ms Doe was frustrated, “Crap.” Ms Doe cursed at events, not people. She did not think Ms Doe talked down to people; Ms Doe was just loud and it seemed that way. Ms Doe was hard of hearing and that affected Ms Doe's speech. (EXHIBIT B-5)

Example ROI / ROII

3. DISCUSSION:

(1) Complainants alleged that Ms Doe treated her subordinate employees with rudeness and disrespect. Army regulations required Army leaders to treat their subordinate employees with dignity, respect, fairness, and consistency and stated that discipline was appropriate for Army employees who were discourteous and used abusive or offensive language.

(2) The preponderance of evidence indicated that in the presence of her subordinate employees, Ms Doe frequently yelled, screamed or spoke loudly; used abusive or offensive language; was discourteous and disrespectful; caused her employees to feel intimidated or fearful; displayed anger and impatience; and was argumentative with GOTCOM law enforcement officers. While a few witnesses testified Ms. Doe was a caring but misunderstood person who had the interests of her employees at heart, most witnesses described serious problems with her professional behavior.

Example ROI / ROII

4. CONCLUSION: The allegation that Ms Doe abused her authority by acting in a discourteous and disrespectful manner to her subordinate employees in violation of DoD Directive 1400.5 and AR 600-100 was substantiated.

5. OTHER MATTERS: Allegations made by the Anonymous complainant against Ms Doe also included criminal allegations against two other GOTCOM employees: Mr. Izzy A. Krook, GS-12, and Ms Nadja Innocente, GS-9.

Example ROI / ROII

6. RECOMMENDATIONS:

a. The report be approved and the case be closed.

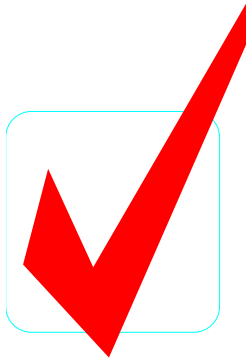
b. Ms Doe and COL Supervisor be notified of the results of the investigation.

c. Refer the issues in OTHER MATTERS to Criminal Investigations Division for appropriate action.

d. File this report as YYY 03-XXXXX.

Obtain Commander's Approval

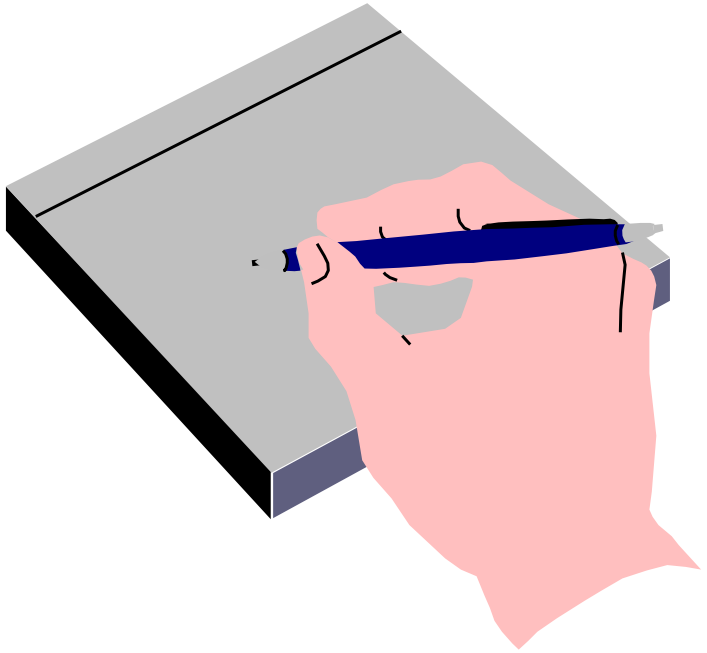
- **Seek Staff Judge Advocate (SJA) review legal sufficiency**
- **Hand-carry ROI to Directing Authority**
- **Usually brief results to Commander**
- **Commander**:
  - Approves
  - Modifies
  - Disapproves
  - Directs additional action



Notification Process

Notification of results made to:

- **Complainant**
- **Commander / Supervisor**
- **Subject / Suspect**



Conduct Follow up

- **Follow-up ensures that all issues have been thoroughly addressed and IG responsibilities have been fulfilled**
- **IGs' primary concern is with ensuring that IG actions, command decisions, or proponent actions were completed**
- **Review for appeals or due-process actions**

Close the IGAR

- **Provide the Complainant a final reply**
  - **Should be written but may be verbal**
  - **Only results that pertain to the complainant**
- **Close the case in the IGARs database**

IG Investigations Issues

Active Component:

- **Closing IG cases when the case is referred**
- **Referring cases after RC Soldiers have REFRAD**

ARNG:

- **Being aware of the different Soldiers' statuses**

USAR:

- **Improperly framed allegations / standards**
- **Time constraints for investigations**
- **Poor understanding of WBR procedures**

Conclusion

Inspector General Investigations:

- **Only one of the Commander's options for resolution of allegations**
- **Administrative, not criminal**
- **Emphasis on soldiers rights, impartiality, and a thorough evaluation of the facts**

QUESTIONS?